Filed 4/23/19 Steele v. 4 Copas USA, Inc. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SEAN STEELE, Plaintiff and Appellant, v. 4 COPAS USA, INC., Defendant and Appellant.	G055251 (Super. Ct. No. 30-2015-00803550) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard W. Luesebrink and Hugh Michael Brenner, Judges. (Retired judges of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed in part, reversed in part, and remanded.

Musick, Peeler & Garrett, Marc R. Greenberg and Cheryl A. Orr for Defendant and Appellant.

Wolff Mascaro and Joshua M. Wolff for Plaintiff and Appellant.

* * *

Sean Steele invested $250,000 in a tequila distributorship, 4 Copas USA, Inc. (the Corporation), in exchange for an ownership interest. The Corporation's purported shareholders (including Steele) filed an earlier lawsuit on behalf of the Corporation (a shareholders derivative action). The shareholders alleged that the Corporation's attorney and some of its directors breached their fiduciary duties. During a preliminary declaratory relief hearing, a court found that Steele was not a shareholder.

Steele then filed the instant lawsuit against the Corporation for breach of contract, and a claim for money had and received. Steele sought $250,000 in damages and prejudgment interest. A jury found in favor of Steele and awarded him $150,000 without interest. The Corporation filed an appeal. Steele filed a cross-appeal.

The Corporation contends the earlier declaratory relief judgment should have barred Steele's instant lawsuit under res judicata and/or collateral estoppel principles. But the parties, the causes of action, and the issues were not the same in the two lawsuits. The Corporation also contends Steele's instant lawsuit was time-barred and the court made two instructional errors. We find no prejudicial errors.

Steele contends the jury improperly awarded him $150,000 and the trial court should have awarded him prejudgment interest. We agree and vacate the amount of the judgment. On remand, the court shall enter a new judgment reflecting an award of $250,000, plus prejudgment interest. In all other respects, the judgment is affirmed.

I

FACTS AND PROCEDURAL BACKGROUND

In early 2007, Pat Merrell contacted Steele about investing in a tequila distributorship. Merrell, Steele's long-time friend, told him that "it was a great opportunity to be in the ground level of a brand new company that was going to go global." Steele was uncertain as to Merrell's position with the Corporation. Steele later received marketing materials.

In August 2007, Steele met with two of the Corporation's executive officers. Steele handed over two checks written to the Corporation totaling $250,000. Steele understood that in return for his investment, he would receive an ownership interest. Steele never received a stock certificate, although he repeatedly asked for one. Over the next few years, Merrell periodically e-mailed Steele to update him and other investors on the status of the Corporation.

The Earlier Lawsuit

In August 2010, several purported shareholders filed an action on behalf of the Corporation against its corporate counsel and four directors (a shareholders derivative action). The complaint generally alleged that the defendants had breached their fiduciary duties. Merrell and Steele were listed among the plaintiffs. Thereafter, Merrell kept Steele informed about the lawsuit, but Steele "really didn't understand it much." The shareholders were represented by Steven Young. Steele did not contribute any attorney fees "'because of my divorce.'"

On September 16, 2013, a bifurcated declaratory relief hearing began. Young said the purpose was to determine "who was a shareholder of the corporation and who was not." Steele did not show up as arranged. Steele told Young by phone that he was sick, but he did not show up again the following day as promised. Steele said that he had been in an auto collision and was still sick. Steele "thought that Pat Merrell would vouch for me."

On September 19, 2013, the trial court entered a declaratory relief judgment designating the shareholders of the Corporation; Merrell was listed as one of the 11 shareholders; Steele was not. Steele felt: "Angry. Betrayed." Other investors did not

testify at the declaratory relief hearing, but they were designated as shareholders by stipulation.[1]

The Instant Lawsuit

On August 10, 2015, Steele filed a complaint against the Corporation alleging breach of an oral contract, and a claim for money had and received. Steele said that he invested $250,000 "in exchange for a commensurate ownership interest." Steele asserted the Corporation "failed to perform its obligations under the agreement." Steele sought "rescission of his agreement with [the Corporation] and the return of his $250,000 investment, plus interest."

The Corporation filed a demurrer, and later a summary judgment motion, on the grounds of res judicata, collateral estoppel, and the statute of limitations. The trial court overruled the demurrer and denied the summary judgment motion. The court concluded that res judicata and collateral estoppel did not apply, and there were triable issues of fact as to when the limitations period began to run.

At trial, the shareholder's attorney, Young, was a witness for the Corporation. Young testified that he could not prove that Steele was a shareholder without his live testimony. Young said that he repeatedly offered to petition the court for reconsideration, but Steele failed to respond.

The jury found in favor of Steele. The jury awarded $150,000 in damages, but with no interest. The Corporation filed a motion for judgment notwithstanding the verdict (JNOV) and/or a motion for new trial. Steele filed a motion for prejudgment interest. The court denied the postverdict motions.

[1] A jury eventually awarded $25 million to the Corporation in the shareholders derivative action.

II

DISCUSSION

The Corporation contends Steele's claims were barred under res judicata and collateral estoppel principles, the lawsuit was barred by the statute of limitations, and the trial court improperly instructed the jury in two instances. Steele contends the jury improperly awarded him less than $250,000, and the court improperly denied his motion for prejudgment interest. We shall address each of these contentions in turn.

A. Res Judicata and Collateral Estoppel

The Corporation argues that Steele's claims in the instant case "were barred by the doctrine of res judicata and/or collateral estoppel." (Capitalization and boldfacing omitted.) We disagree.

1. Relevant Legal Principles

Under the doctrine of res judicata (claim preclusion) a party is precluded from litigating an identical claim in a subsequent proceeding. (*Takahashi v. Board of Education* (1988) 202 Cal.App.3d 1464, 1473-1474.) Under the doctrine of collateral estoppel (issue preclusion) a party is precluded from litigating an identical issue in a subsequent proceeding. (*Ibid.*) These are questions of law; we apply a de novo standard of review. (*Roos v. Red* (2005) 130 Cal.App.4th 870, 878.)

Shareholders may file a "derivative" action. (*Vega v. Jones, Day, Reavis & Pogue* (2004) 121 Cal.App.4th 282, 297 ["A derivative suit is . . . brought on behalf of a corporation . . . often for breach of fiduciary duty . . . by corporate officers"].)
A derivative action "does not transfer the cause of action from the corporation to the shareholders. Rather, the cause of action . . . belongs to and remains with the corporation." (*McDermott, Will & Emery v. Superior Court* (2000) 83 Cal.App.4th 378,

382.) A shareholder is a nominal plaintiff. (*Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1003.) "'The corporation [is] the real party plaintiff.'" (*Ibid*.)

2. Analysis - Res Judicata (*Claim Preclusion*)

"*Claim preclusion* 'prevents relitigation of the same cause of action in a second suit between the same parties . . . .' [Citation.] Claim preclusion arises if a second suit involves (1) the same cause of action (2) between the same parties [or those in privity with them] (3) after a final judgment on the merits in the first suit. [Citations.] If claim preclusion is established, it operates to bar relitigation of the claim altogether." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.) "Privity is essentially a shorthand statement that collateral estoppel is to be applied . . . ; there is no universally applicable definition of privity." (*Lynch v. Glass* (1975) 44 Cal.App.3d 943, 947.)

Here, the "real plaintiff" in the earlier shareholders derivative lawsuit was the Corporation. The defendants were the Corporation's attorney and some of its directors. In the instant lawsuit, Steele is the plaintiff and the Corporation is the defendant. Because the earlier lawsuit was a dispute between the Corporation and its directors, and the instant lawsuit is a dispute between Steele and the Corporation, claim preclusion does not apply because the two lawsuits do not involve the same parties. Further, the earlier lawsuit primarily involved tort claims, whereas the instant lawsuit involves strictly contract related claims. Therefore, claim preclusion also does not apply because the two lawsuits do not involve the same causes of action.

The Corporation argues Steele was "in privity" with the shareholders in the earlier lawsuit. But the Corporation was the "real plaintiff" in the derivative lawsuit, the shareholders were merely nominal plaintiffs. In any event, the defendants in the earlier lawsuit (the corporation's attorney and other directors) are certainly not parties in the instant lawsuit. Thus, res judicata (the preclusion of the same claims between the same parties) does not apply.

3. Analysis - Collateral Estoppel (*Issue Preclusion*)

Collateral estoppel "prohibits the relitigation of issues argued and decided in a previous case, even if the second suit raises different causes of action." (*DKN Holdings LLC v. Faerber*, *supra*, 61 Cal.4th at p. 824.) Issue preclusion applies: "(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." (*Id*. at pp. 824-825.)

Declaratory relief establishes legal relationships between parties, but it does not bar subsequent lawsuits based on those relationships. (See *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 898-899.) "The remedies provided by this chapter [declaratory relief judgments] shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party to such action, and *no judgment under this chapter shall preclude any party from obtaining additional relief based upon the same facts*." (§ Code Civ. Proc., § 1062, italics added.)[2]

Here, in the declaratory relief hearing, the sole issue was the designation of the Corporation's shareholders. Steele was found not to be a shareholder. The issues in the instant lawsuit, based on the jury's special verdict form, were: (1) when Steele learned of the alleged breach (triggering the statute of limitations); (2) whether Steele had proven a breach of contract; (3) whether Steele had proven a claim for money had and received; (4) the amount of damages, if any; and (5) whether Steele should be awarded prejudgment interest, and if so, from what date.

The issue conclusively determined in the earlier lawsuit (Steele was not a shareholder) was not among the five issues litigated and decided in the instant lawsuit. Thus, the doctrine of collateral estoppel or issue preclusion does not apply.

---

[2] All further undesignated statutory references will be to the Code of Civil Procedure.

B. Statute of Limitations

The Corporation argues that "as a matter of law" the trial court was required to have granted its motions for summary judgment, nonsuit, new trial, and JNOV on the basis that Steele's claims were barred under the statute of limitations. (Capitalization and boldfacing omitted.) We disagree.

Generally, a statute of limitations issue involves questions of fact. (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1112.) Review usually "*begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence . . . which will support the determination." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) However, when "the relevant facts are not in dispute, the application of the statute of limitations may be decided as a question of law." (*International Engine Parts, Inc. v. Feddersen & Co.* (1995) 9 Cal.4th 606, 611-612.)

1. Relevant Legal Principles

"'Statute of limitations' . . . prescribe the periods beyond which a plaintiff may not bring a cause of action." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806.) "Civil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued . . . ." (§312.)

Ordinarily, "a cause of action accrues" (the limitations period begins to run), upon commission of the claimed civil wrong. (*City of Pasadena v. Superior Court* (2017) 12 Cal.App.5th 1340, 1348.) But a "cause of action upon a contract . . . shall not be deemed to have accrued until the discovery of the loss or damage suffered by the aggrieved party." (§ 339, subd. (1).) The statute of limitations in a breach of contract cause of action, or a claim for money had and received, is two years. (See § 339.)

2. Relevant Dates and Procedural History

In 2007, Steele gave two checks to the Corporation totaling $250,000. Steele understood that in return for his investment, he would receive an ownership interest in the Corporation.

On September 19, 2013, the trial court entered a declaratory relief judgment listing the 11 shareholders of the Corporation. Steele was not listed as a shareholder.

On August 10, 2015, Steele filed a complaint alleging a breach of an oral contract, and a claim for money had and received. The trial court overruled the Corporation's motion for summary judgment, finding "triable issues exist as to: [¶] (i) The date of the accrual of [Steele's] causes of action . . . ."

At trial, the jury was asked: "With respect to any harm for which Sean Steele seeks relief in this action, did Steele know of the harm more than two years before August 10, 2015?" The jury checked a line next to the word, "No."

3. Analysis

Steele testified that on September 19, 2013, he learned for "the first time that I . . . was no longer a shareholder." Steele's testimony provides sufficient evidence that he became aware of the harm (the breach of contract) on September 19, 2013. Steele filed the instant lawsuit on August 10, 2015, which was within two years of the date when the actions accrued. Thus, Steele's lawsuit was not time-barred by the two-year statute of limitations.

The Corporation argues that as "a matter of law" Steele's causes of action "accrued" at some point earlier than September 19, 2013. The Corporation argues that "the statute of limitations started running from the moment Steele gave $250,000 and received nothing in return[.]" Alternatively, the Corporation argues that the limitations

period started running when "others were claiming to be shareholders of the company" or at various other points during the derivative lawsuit (from 2010 to 2013).

But the Corporation's arguments regarding when the limitations period began to run are all factual in nature. And these factual disputes were resolved by the jury's verdict, which is supported by substantial evidence. Thus, the trial court did not commit error "as a matter of law" in finding that Steele's lawsuit was not time-barred under the statute of limitations.

C. Jury Instructions

The Corporation argues that the trial court: 1) misinstructed the jury on when the limitations period began to run on the claim for money had and received; and 2) misinstructed the jury on the doctrine of unclean hands. We find no prejudicial errors.

When reviewing jury instructions, we apply a de novo standard of review. (*Cristler v. Express Messenger Systems, Inc.* (2009) 171 Cal.App.4th 72, 82.) "A judgment may not be reversed for instructional error in a civil case 'unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.'" (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580.) "Instructional error in a civil case is prejudicial 'where it seems probable' that the error 'prejudicially affected the verdict.'" (*Ibid.*)

1. The Money Had and Received Jury Instruction

A claim for money had and received is viable "'"wherever one person has received money which belongs to another, and which in equity and good conscience should be paid over to the latter."'" (*Avidor v. Sutter's Place, Inc.* (2013) 212 Cal.App.4th 1439, 1454.) "Although such an action is one at law, it is governed by principles of equity . . . ." (*Mains v. City Title Insurance Co.* (1949) 34 Cal.2d 580, 586.) If related to an alleged breach of contract, the limitations period for a claim of money had

and received is two years, and the limitations period begins to run or "accrues" upon "the discovery of the loss or damage suffered by the aggrieved party." (§ 339, subd. (1).)

Here, the trial court rejected the Corporation's proposed instruction that: "In a claim for money had and received, the statute of limitations begins to run w*hen the money is given over by the plaintiff*." (Italics added.) The court instructed the jury using a modified version of CACI No. 338, as follows: "On a claim for money had and received, the statute of limitations begins to run *when the money should have been returned to the Plaintiff*." (Italics added.)

The instruction given by the court was somewhat imprecise. The statute of limitations did not begin to run "when the money should have been returned" as the court instructed. Rather, the statute of limitations began to run (accrued) when Steele "discover[ed] the loss or damage." (§ 339, subd. (1).)

However, it is not probable that this error affected the verdict. Steele said he became aware that he was no longer a shareholder on September 19, 2013, the date of the declaratory relief judgment. Steele's investment then arguably "should have been returned to" him at some point *on or after* that date. But any date on or after September 19, 2013, would have been within two years of the filing of the complaint on August 10, 2015. Therefore, it is probable that the instruction did not affect the jury's verdict.

The Corporation cites *Fall v. Lincoln Mortgage Co.* (1931) 115 Cal.App. 651, 654 (*Fall*), for the proposition that a cause of action for money had and received must "be commenced within two years after the money is received." But *Fall* is distinguishable. In *Fall*, the plaintiff argued that he was entitled to recover because the contract was void *ab initio* or the defendant failed to provide consideration. (*Id*. at p. 652.) The court found that the plaintiff knew of such deficiencies shortly after entering into the agreement, and that he "must have known that he was sleeping upon these rights when he waited four and a half years before commencing" the action. (*Id*. at p. 655.)

Here, unlike *Fall*, Steele did not argue that his oral contract with the Corporation was void *ab initio* or that there was no consideration (the Corporation allegedly promised Steele an ownership interest in exchange for his investment). Rather, the limitations period for the claim of money had and received began to run or "accrued" when Steele discovered that the Corporation had breached its promise. Thus, the trial court properly refused to give the Corporation's proposed instruction that the limitations period began to run "when the money is given over by the plaintiff."

2. The Unclean Hands Jury Instruction

"No one can take advantage of his own wrong." (Civ. Code, § 3517.) "The defense of unclean hands arises from the maxim, '"'He who comes into Equity must come with clean hands.'"' [Citation.] The doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim. [Citations.] The defense is available in legal as well as equitable actions. [Citations.] Whether the doctrine of unclean hands applies is a question of fact." (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978.)

The Corporation claimed the defense of unclean hands. Among its contentions, the Corporation argued that Steele committed misconduct by failing to appear at the bifurcated declaratory relief hearing. The Corporation also argued that Steele committed misconduct by failing to respond to Young's offers to petition the court to reconsider its declaratory relief judgment.

The trial court instructed: "Defendant [the Corporation] has asserted the affirmative defense of 'unclean hands.' To aid you in evaluating [the Corporation's] assertion, you may consider the following statements of law: [¶] California has long realized the maxim that 'No one can take advantage of his own wrong.' In other words, he who comes into court must come with clean hands. [A] plaintiff must act fairly in the

matter for which he seeks a remedy. . . . [¶] Not every wrongful act constitutes unclean hands. . . . [¶] . . . *Past improper conduct or prior misconduct that only indirectly affects the problem before the court does not suffice*." (Italics added.)

The Corporation takes issue with the italicized sentence. But the italicized sentence is a direct quote from a published opinion and it is a correct statement of the law. (*Kendall-Jackson Winery, Ltd. v. Superior Court*, *supra*, 76 Cal.App.4th at p. 979.) Nonetheless, the Corporation argues that the instruction allowed Steele "to manipulate the jury to avoid the letter of the law." We are not persuaded.

We presume the jury was composed of people who were able to understand and follow the court's instructions. (See *Thompson v. County of Los Angeles* (2006) 142 Cal.App.4th 154, 163.) Further, we interpret jury instructions, """if possible, so as to support the judgment rather than defeat it."""" (*Ibid*.) With these standards in mind, we find no error regarding the legally correct unclean hands jury instruction.

D. The Damage Award and Prejudgment Interest

Steele argues that because he sought rescission of the contract, the jury improperly awarded him less than $250,000, and the court should have awarded him prejudgment interest. We agree.

1. Relevant Legal Principles

The remedy of rescission extinguishes the contract, terminates further liability, and restores the parties to their former positions by requiring them to return whatever consideration they have received. (*Nmsbpcsldhb v. County of Fresno* (2007) 152 Cal.App.4th 954, 959-960.) The "[r]elief given in rescission . . . puts the rescinding party in the *status quo ante*, returning him to his economic position before he entered the contract." (*Runyan v. Pacific Air Industries* (1970) 2 Cal.3d 304, 316, fn. 15.)

"A failure to timely move for a new trial ordinarily precludes a party from complaining on appeal that the damages awarded were either excessive or inadequate . . . ." (*Jamison v. Jamison* (2008) 164 Cal.App.4th 714, 719.) Factual issues should first be resolved at the trial court. (*Ibid*.) "[I]f ascertainment of the amount of damages turns on the credibility of witnesses, conflicting evidence, or other factual questions, the award may not be challenged for inadequacy or excessiveness for the first time on appeal." (*Id.* at pp. 719-720.) However, "'the failure to move for a new trial does not preclude a party from asserting error in the trial of damages issues—e.g., erroneous evidentiary rulings, instructional errors, or *failure to apply the proper measure of damages*.'" (*Greenwich S.F., LLC v. Wong* (2010) 190 Cal.App.4th 739, 759, italics added.)

An appellate court may reverse a damage award—even in the absence of a motion for new trial—when the fact finder has failed to apply the proper measure of damages. (See, e.g., *Christiansen v. Roddy* (1986) 186 Cal.App.3d 780, 789-791 [damage award reversed despite absence of new trial motion where trial court improperly failed to apply legal interest rate]; see also *Eicher v. Advanced Business Integrators, Inc.* (2007) 151 Cal.App.4th 1363, 1376-1377 [damage award reversed despite absence of new trial motion where trial court improperly determined number of hours worked by employee]; *Storage Services v. Oosterbaan* (1989) 214 Cal.App.3d 498, 515, fn. 9 [damage award reversed despite absence of new trial motion where jury's award of punitive damages was "excessive"].)

Prejudgment interest is awarded "for damages capable of being ascertained on a date certain." (*Utility Audit Co., Inc. v. City of Los Angeles* (2003) 112 Cal.App.4th 950, 956, fn. omitted.) "A person who is entitled to recover damages certain . . . and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day . . . ." (Civ. Code, § 3287, subd. (a).) "'Damages are deemed certain or capable of being made certain . . . where there is essentially no

dispute between the parties concerning the basis of computation of damages . . . .'" (*Fireman's Fund Ins. Co. v. Allstate Ins. Co.* (1991) 234 Cal.App.3d 1154, 1173.)

If the requirements of Civil Code section 3287, subdivision (a) are met, an award of prejudgment interest is mandatory. (*North Oakland Medical Clinic v. Rogers* (1998) 65 Cal.App.4th 824, 828-829.) The denial of prejudgment interest under Civil Code section 3287, subdivision (a), presents a question of law. (*Ibid.*)

"A party who fails to object to a special verdict form ordinarily waives any objection to the form." (*Behr v. Redmond* (2011) 193 Cal.App.4th 517, 530.) However, "'[w]aiver is not found where the record indicates that the failure to object was not the result of a desire to reap a "technical advantage" or engage in a "litigious strategy."'" (*Ibid.*) "The 'doctrine of invited error' is an 'application of the estoppel principle': 'Where a party by his conduct induces the commission of error, he is estopped from asserting it as a ground for reversal' on appeal." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 403.) The purpose of the doctrine is to "prevent a party from misleading the trial court and then profiting therefrom in the appellate court." (*Ibid.*)

2. Relevant Procedural History

The trial court instructed the jury on damages: "If you decide that Sean Steele has proved his claim against [the Corporation] for breach of contract, you also must decide how much money will reasonably compensate Steele for the harm caused by the breach. This compensation is called 'damages.' [¶] *Steele seeks rescission of the oral contract and return of his $250,000 investment. The purpose of such remedy is to restore Steele to his pre-contract position.* [¶] To recover damages for any harm Steele must prove that when the contract was made, both parties knew or could reasonably have foreseen that the harm was likely to occur in the ordinary course of events as a result of the breach of the contract. [¶] Steele must also prove the amount of his damages according to the following instructions. He does not have to prove the exact amount of

damages. You must not speculate or guess in awarding damages. [¶] *Steele claims damages of $250,000 for his investment made in 2007*." (Italics added.)

During the trial, Steele drafted a special verdict form.[3] The verdict form was reviewed by the parties, submitted to the trial court, and given to the jury before its deliberations without objection. The special verdict form stated: "Complete the section below only if you find in favor of Sean Steele on at least one of his claims." The form also stated: "We award Sean Steele the following damages: $_____ (not to exceed $250,000)." The jury filled in the amount of $150,000.

The special verdict form included the following question: "5. Should the court award interest on the damages to Sean Steele and, if so, from what date?" After its deliberations, the jury placed a check mark next to the word "No."

Steele did not object to the jury instruction. Steele did not object to the special verdict form. Steele did not file a motion for a new trial. However, Steele filed a postverdict motion for prejudgment interest under Civil Code section 3287, subdivision (a). Steele argued that "the Court should award . . . prejudgment interest on the jury's award of $150,000 at a rate of 10% per annum from September 19, 2013 until entry of judgment." The court denied Steele's motion.

3. Analysis

It is undisputed that Steele gave the Corporation $250,000. This was the amount of the consideration at issue in the breach of contract cause of action, as well as the basis of Steele's claim for money had and received. Because the jury was instructed that Steele was seeking rescission of the contract and the return of his $250,000

[3] This a logical inference based on the record. The special verdict form was printed on paper originating from the office of Joshua M. Wolff, Steele's counsel. Mr. Wolff told the court: "You have a draft [of the verdict form] that's being fine-tuned and we're going to do that right now." The court later asked: "Do you have your verdict forms?" Mr. Wolff responded, "Yes, that should be in there."

investment—and the jury found that Steele proved both causes of action—it is apparent that the jury's award of $150,000 was inadequate as a matter of law. Thus, we will vacate the $150,000 damage award and order the trial court to enter an award of $250,000. This will restore Steele "to his economic position before he entered the contract." (*Runyan v. Pacific Air Industries, supra,* 2 Cal.3d at p. 316, fn. 15.)

Steele also argues that the jury had no legal authority to rule on the issue of prejudgment interest. (Civ. Code, § 3287, subd. (a).) We agree. (See *North Oakland Medical Clinic v. Rogers, supra,* 65 Cal.App.4th at pp. 828-829 [if the requirements are met, an award of prejudgment interest by the court is mandatory].)

The Corporation argues that Steele has forfeited his damages argument on appeal because he did not raise the issue in a motion for new trial. That is the general rule. However, given that $250,000 was the undisputed amount of money at issue, we do not have to resolve conflicts in the evidence or evaluate credibility. Therefore, it was not necessary for Steele to file a motion for new trial in order to preserve the issue on appeal. (See, e.g., *Storage Services v. Oosterbaan, supra,* 214 Cal.App.3d at p. 515, fn. 9 [damage award reversed in absence of new trial motion where jury's award of punitive damages was "excessive"].)

The Corporation also argues that Steele forfeited his damages and prejudgment interest claims on appeal because he failed to object to the verdict form, which allowed the jury to enter any damages amount "not to exceed $250,000." The special verdict form also put the question of prejudgment interest to the jury.

Appellate courts will ordinarily not consider issues that could have been resolved in the trial court through appropriate objections. However, "[t]he application of the forfeiture rule is not automatic; appellate courts have discretion to excuse such forfeiture. [Citation.] Parties have been permitted to raise new issues on appeal where the issue is purely a question of law on undisputed facts." (*Sheller v. Superior Court* (2008) 158 Cal.App.4th 1697, 1709 [scope of trial court's authority to sanction foreign

attorney appearing pro hac vice was question of law that could be raised for first time on appeal]; see, e.g., *Preserve Shorecliff Homeowners v. City of San Clemente* (2008) 158 Cal.App.4th 1427, 1433 [challenge to constitutionality of statute involved pure question of law, which Court of Appeal could review for first time on appeal]; see also *Cal Sierra Construction, Inc. v. Comerica Bank* (2012) 206 Cal.App.4th 841, 850-851 [procedure to challenge mechanic's lien was properly before Court of Appeal where issue was "one of law based on undisputed facts"].)

In sum, Steele was either entitled to $250,000 or nothing. The jury's award of $150,000 was therefore not legally permitted based on the undisputed facts. Further, prejudgment interest should have been calculated at a rate of 10% per annum from the date of September 19, 2013, until entry of judgment. Although Steele arguably forfeited these issues because he did not raise appropriate objections in the trial court, we are exercising our discretion to excuse the forfeitures.

III

DISPOSITION

The amount of the judgment is vacated. On remand, the court shall enter a new judgment reflecting an award of $250,000 in favor of Steele, with an award of prejudgment interest as explained in this opinion. In all other respects, the judgment is affirmed. Steele shall recover his costs on appeal.

MOORE, ACTING P. J.

WE CONCUR:

ARONSON, J.

THOMPSON, J.